80 Highland Avenue
Rochester, NY 14620
June 17, 1993

Nicole Barnum
Lambda Legal Defense and Education Fund, Inc.
666 Broadway, 12th Floor
New York, New York 10012

Re: Gay Alliance of Genesee Valley v. City Assessor of Rochester, New York

Dear Ms. Barnum:

Thank you for letting me know that the Lambda Legal Defense and Education Fund has agreed to submit an amicus brief on the appeal in this case.

As we discussed, I believe this case is significant because it is the only one of which I am aware where the court found first amendment-based unconstitutional discrimination based on sexual orientation notwithstanding defendant's denial of discriminatory conduct. Lambda's participation will help ensure that the Fourth Department understands and appreciates the significance of this case.

I have enclosed copies of our briefs as you requested. I did not bother to enclose defendant's brief because it is poorly written and of little value.

I suspect that much of plaintiff's reply appeals brief will respond to the many non-constitutional issues that defendant will undoubtedly concentrate on: the discovery issue, the sanctions, and what appears to be yet another defense theory they will try to float: i.e., that the use of every room of the Center has to be examined individually to determine whether it comports with the statute, and that the Center should be given a "partial" exemption, depending on the use of each room! As a result, although we will deal with the constitutional and §1983/municipal liability arguments that defendant will undoubtedly raise as well, our constitutional arguments will probably not be as comprehensive as they could be. For this reason, an amicus brief by Lambda that focuses on the discrimination/first amendment constitutional issues (which are the "sexy" -- so to speak -- issues) will be extremely helpful and greatly appreciated. It should go without saying, though, that any other areas Lambda wants to focus on, either in addition to or instead of the constitutional arguments, will be immensely valuable and greatly appreciated.

To file an amicus in the Appellate Division, Fourth Department, the amicus, on notice to the parties, has to file a motion to file a brief as amicus curie. The next motion date in

the Fourth Department is August 30, 1993. Depending on the timing of the motion and the briefing schedule, Lambda may or may not want to attach a copy of its brief to the motion.

In this case, appellant's brief is theoretically due July 11, 1993. However, the next appeals term starts on August 30, 1993, and every appellant who wants to be heard during the August 30 term must file his/her brief by July 2, 1993. Considering that the City has done nothing so far to perfect its appeal, I would be shocked if it filed its brief by July 2, 1993. After the August term, the next appellate term starts on October 18, 1993.

So, if the City files its brief by July 2, 1993 so as to be on the August 30 term calendar, Lambda would have to move to be amicus on August 30, 1993, and simultaneously attach its brief to its motion. If the City does not file its brief by July 2, 1993 (the most likely scenario), meaning that the earliest we could be heard on the case is October 18, 1993, it would not be necessary to attach a copy of the brief to Lambda's motion, also made returnable August 30, 1993, since respondent briefs would not be due until September 28, 1993 for the October term.

In short, Lambda should prepare to move to be amicus, with plenty of notice time to the parties, on August 30, 1993. Chances are we will not be scheduled until the October term at the earliest.

For your information, the Fourth Department does not permit amicus to be heard on oral argument.

I know some of this information may be confusing, so if you have any questions about this stuff, or anything else, feel free to call me during the day at 716-454-6500. I am moving soon, and do not know my new home number.

Thanks again for Lambda's participation in this action. I look forward to hearing from you soon, and to working with you further on this case.

Very truly yours,

Ellen M. Yacknin, Esq.

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